

until the tariff investigation is concluded.⁴⁸⁷

307. In the *Virtual Collocation Order*, we responded to *Bell Atlantic v. FCC*⁴⁸⁸ by mandating virtual collocation and requiring LECs to file virtual collocation tariffs by September 1, 1994.⁴⁸⁹ Following the filing of these tariffs, the Bureau, in the *Virtual Collocation Tariff Suspension Order*, partially suspended for a five-month period that part of each LEC's proposed overhead loadings that exceeded the lowest overhead loading factor reflected in the rates for each LEC's comparable DS1 and DS3 services.⁴⁹⁰ The Bureau determined that LEC's DS1 and DS3 services, with or without channel mileage, are comparable to the services that interconnection customers can offer using expanded interconnection.⁴⁹¹ The Bureau observed that these services use the same basic types of equipment in the LEC's central office that virtual collocation service does. These LEC services, the Bureau found, face actual or potential competition from interconnectors seeking to use expanded interconnection to compete in the interstate access market.⁴⁹² Accordingly, the Bureau reasoned that if overhead loadings for these comparable services differed from the overhead loadings assigned to virtual collocation services without adequate justification, LECs could unreasonably discriminate against their interconnector-rivals. The Bureau stated that, by recovering low overheads in the rates for services with which interconnectors compete, and high overheads in the rates for the LEC facilities upon which interconnectors rely to provide competitive services, LECs could place the interconnectors at a disadvantage competitively.⁴⁹³ In the *Virtual Collocation Overhead Prescription Order*, released on May 11, 1995, we affirmed the Bureau's analysis in the *Virtual Collocation Tariff Suspension Order*, and concluded that most LECs had failed to demonstrate that their overhead loading levels, and consequently their virtual collocation rates, were just and reasonable.⁴⁹⁴ We prescribed maximum permissible overhead loading factors consistent with the interim overhead

⁴⁸⁷ *Interim Overhead Order*, 8 FCC Rcd at 8347, 8356.

⁴⁸⁸ 24 F.3d 1441.

⁴⁸⁹ *Virtual Collocation Order*, 9 FCC Rcd 5154.

⁴⁹⁰ *Ameritech Operating Companies, etc., et al.*, CC Docket No. 94-97, Order, 10 FCC Rcd 1960 (Com. Car. Bur. 1994) ("*Virtual Collocation Tariff Suspension Order*").

⁴⁹¹ *Id.* at 1971 (citing Commission Requirements for Cost Support Material To Be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rcd 5679 (Com. Car. Bur. 1994) ("*TRP Order*").

⁴⁹² *Id.* at 1973-74.

⁴⁹³ *Id.*

⁴⁹⁴ *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, CC Docket No. 94-97, Phase I, Report and Order, 10 FCC Rcd 6375, 6376-77 (1995) ("*Virtual Collocation Overhead Prescription Order*").

adjustments in the *Virtual Collocation Tariff Suspension Order*.

2. Discussion

a. Overhead Loading Standard

308. We have previously determined that, absent justification, LECs may not recover, in charges for physical collocation, a share of overhead costs greater than they recover in charges for comparable services.⁴⁹⁵ We adopted this policy because the interconnector is both a customer and competitor of the LEC, and an interconnector's price for the service it provides to its customers depends in part on the price at which the LEC sells bottleneck facilities that are critical productive inputs for the interconnector. Absent our overhead loading policy, LECs could assign a relatively high level of overheads to the physical collocation services upon which interconnectors rely to compete with the LECs while pricing LEC competing services to recover a relatively low level of overheads. Recovering overhead loadings in this manner would constitute a strong entry barrier and would frustrate our policy of promoting competitive entry into the interstate access service market.

309. Accordingly, in order to apply our overhead loading policy, we must identify the LEC interstate access services that are comparable to those access services offered by the interconnectors to their customers using expanded interconnection. Comparable services are those for which the LEC and the interconnector compete or potentially compete for the same customers. After identifying the comparable services, we compare the overhead loadings reflected in the rates for the comparable services with the overhead loadings assigned to the physical collocation services. If the overhead loading factors reflected in the rates for the comparable services are lower than the overhead loading factors reflected in the rates for the physical collocation services, we must determine whether the differences are justified.

310. We find that the interconnectors' services are comparable to the LECs' point-to-point⁴⁹⁶ DS1 and DS3 special access and switched transport services, including channel termination services offered with and without interoffice mileage.⁴⁹⁷ We are not specifying any one particular point-to-point DS1 and DS3 special access and switched transport service as comparable to physical collocation because interconnectors can use physical collocation service to provide services comparable to any of these LEC DS1 and DS3 special and

⁴⁹⁵ See *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7429; *Virtual Collocation Order*, 9 FCC Rcd at 5189.

⁴⁹⁶ A point-to-point service provides a connection between the customer premises and another location, which may be another customer's premises or a LEC central office. See *Virtual Collocation Tariff Suspension Order*, 10 FCC Rcd at 1971.

⁴⁹⁷ This finding is consistent with our determination in the virtual collocation investigation. See *Virtual Collocation Overhead Prescription Order*, 10 FCC Rcd at 6391-94; *Virtual Collocation Tariff Suspension Order*, 10 FCC Rcd at 1971-72; *TRP Order*, 9 FCC Rcd at 5682-83.

switched access services.⁴⁹⁸

b. Overhead Loading Prescription

- i. Ameritech, Bell Atlantic, BellSouth, Central, GTOC, Lincoln, Nevada, NYNEX, Pacific, Rochester, SNET, and US West

311. We have reviewed the overhead data submitted in this investigation by Ameritech, Bell Atlantic, BellSouth, Central, GTOC, Lincoln, Nevada, NYNEX, Pacific, Rochester, SNET, and US West and have compared the overhead loading factors these LECs assign to their physical collocation services with the overhead loading factors reflected in the rates for their comparable services. The data these LECs submit in support of their proposed rates show, with one exception, that they assign substantially higher overhead loading factors to physical collocation services than those that they currently recover in their charges for comparable services.⁴⁹⁹ SNET is the exception to this general rule because the record indicates that the overhead loading factors that SNET assigns to physical collocation service do not exceed the overhead loading factors reflected in its rates for comparable services.

312. Ameritech, Bell Atlantic, BellSouth, Central, GTOC, Lincoln, Nevada, NYNEX, Pacific, Rochester, and US West do not adequately justify recovering in their physical collocation rates larger overhead loadings than they recover in their comparable service rates. Several LECs attempt to justify assigning higher overhead loadings to physical collocation services by arguing that it would be unreasonable to compare the overhead loadings they recover in their rates for comparable services subject to price cap regulation

⁴⁹⁸ See *Virtual Collocation Overhead Prescription Order*, 10 FCC Rcd at 6391-94.

⁴⁹⁹ See Data Request Response from F. Gordon Maxson, Director - Regulatory Affairs, GTE to William F. Caton, Acting Secretary, FCC (dated April 29, 1994); Data Request Response from Robert A. Mazer, Counsel for Lincoln to Charles Needy, Tariff Division (dated May 16, 1994); Data Request Response from Michael J. Shortley, III, Rochester Telephone to Charles Needy, Tariff Division, FCC (dated March 22, 1994); Data Request Response from Eugene J. Baldrate, SNET to Gregory J. Vogt, Chief, Tariff Division, FCC (dated May 13, 1994); Data Request Response from Warren Hannah, Sprint to Chuck Needy, Tariff Division, FCC (dated May 9, 1994); Data Request Response from John Litchfield, Director, Costs, Ameritech to Gregory J. Vogt, Chief, Tariff Division, FCC (dated May 20, 1994); Data Request Response from Maureen Keenan, Director - FCC Relations, Bell Atlantic to William F. Caton, Acting Secretary, FCC (dated April 25, 1994); Data Request Response from W.W. (Whit) Jordan, Executive Director-Federal Regulatory, BellSouth to Gregory J. Vogt, Chief, Tariff Division, Common Carrier Bureau (dated May 19, 1994); Data Request Response from Alan S. Cort, Staff Director, Federal Regulatory Matters, NYNEX to William F. Caton, Acting Secretary, FCC (dated May 16, 1994); Data Request Response from Alan S. Cort, Staff Director, Federal Regulatory Matters, NYNEX to William F. Caton, Acting Secretary, FCC (dated March 23, 1994); Data Request Response from Jo Ann Goddard, Director, Federal Regulatory Relations, Pacific Telesis (Nevada) to Chuck Needy, Tariff Division, FCC (dated May 20, 1994); Data Request Response from Jo Ann Goddard, Director, Federal Regulatory Relations, Pacific Telesis to Chuck Needy, Tariff Division, FCC (dated May 9, 1994); Letter from BB Nugent, Executive Director, Federal Regulatory, US West to David Sieradzki, Chief, Legal Branch, Competitive Pricing Division, FCC (dated October 9, 1996).

with the overhead loadings they assign to newly developed expanded interconnection services subject to cost-based regulation.⁵⁰⁰ We do not agree. The price caps regime is intended in part to prevent the LECs from charging monopolistically high prices, *i.e.*, higher than a LEC could charge if it faces effective competition. Requiring the assignment of overheads to physical collocation services that are no greater than the overheads the LECs recover from their services subject to price cap regulation helps ensure that LECs do not assign monopolistically high overheads to physical collocation services. Thus, the fact that expanded interconnection services are currently excluded from price cap regulation does not justify assigning unreasonably higher overheads to those services. We find that this argument effectively seeks reconsideration of our connection charge policy adopted in the *Special Access Expanded Interconnection Order* and reaffirmed in the *Virtual Collocation Order*. In those orders, we required that, absent justification, overhead loadings assigned to physical collocation service could be no greater than the overhead loadings recovered in rates for comparable services that are regulated under price caps.⁵⁰¹ We will not reconsider this policy within the context of this investigation because a tariff investigation is not the proper forum for reconsidering policies adopted in a rulemaking proceeding.

313. Based on our review of the LECs' direct cases and accompanying cost support data, we find that Ameritech, Bell Atlantic, BellSouth, Central, GTOC, Lincoln, Nevada, NYNEX, Pacific, Rochester, and US West do not justify assigning overhead loading factors to DS1 and DS3 physical collocation services that are higher than the lowest overhead loading factors reflected in their rates for comparable DS1 and DS3 services and we, therefore, find that their overhead loading factors are unjust and unreasonable.⁵⁰² Accordingly, pursuant to our authority under Sections 201 and 205 of the Act,⁵⁰³ we adopt a final prescription of the maximum permissible overhead loadings for physical collocation services. Ameritech, Bell Atlantic, BellSouth, Central, GTOC, Lincoln, Nevada, NYNEX, Pacific, Rochester, and US West must reduce their rates for physical collocation service rate elements. For each physical collocation service DS1 rate element, each of these LECs must reduce its rates to reflect the lower of (1) the overhead loading factor assigned to each particular physical collocation service DS1 rate element; and (2) the lowest overhead loading factor reflected in its rates for any of its comparable DS1 services.⁵⁰⁴ For each physical collocation service DS3 rate element, each of these LECs must reduce its rates to reflect the lower of (1) the overhead

⁵⁰⁰ See, *e.g.*, Ameritech Direct Case at 10; GTE Direct Case at 8; Nevada Direct Case at 4; SNET Direct Case at 2-3.

⁵⁰¹ See *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7429; *Virtual Collocation Order*, 9 FCC Rcd at 5189.

⁵⁰² The overhead loading factors that SNET assigns to DS1 and DS3 physical collocation services are lower than the lowest overhead loading factors it assigns to comparable DS1 and DS3 services.

⁵⁰³ 47 U.S.C. §§ 201 and 205.

⁵⁰⁴ The lowest overhead loading factor for LECs' comparable DS1 services are set forth in Appendix D.

loading factor assigned to the each particular physical collocation service DS3 rate element; and (2) the lowest overhead loading factor reflected in its rates for any of its comparable DS3 services.⁵⁰⁵ For each physical collocation service rate element that is not specifically a DS1 or DS3 rate element and applies to both DS1 and DS3 services, we require each of these LECs to reduce its rates to reflect the lower of (1) the overhead loading factor assigned to each particular physical collocation service rate element; and (2) the lowest overhead loading factor reflected in its rates for any of its comparable DS1 or DS3 services. For all physical collocation rate elements, we also order Ameritech, Bell Atlantic, BellSouth, Central, GTOC, Lincoln, Nevada, NYNEX, Pacific, Rochester, and US West to recalculate their rates and to pay refunds based on the difference between the maximum permitted overhead loading factor and the higher overhead loading factor reflected in the rates actually charged to their interconnector-customers.

314. When an overhead loading factor that a LEC assigns to a physical collocation service rate element exceeds the lowest overhead loading factor among the LEC's comparable services, we find that it is appropriate to prescribe the lowest overhead loading factor among all its point-to-point DS1 and DS3 special access and switched transport services because these are the services against which interconnectors seek to compete in the interstate access service markets.⁵⁰⁶ Our goal of fostering efficient competition in the interstate access market requires that efficient interconnectors have the opportunity to compete effectively with LECs for all access customers, including customers from which LECs recover the lowest amount of overhead. If LECs were permitted to charge rates for physical collocation service for which the overhead loading factors exceeded the overhead loading factors we are prescribing in this Order, efficient interconnectors would have difficulties in providing a competitive alternative to LECs' services to a potentially large segment of customers in the interstate access market. These customers would receive only limited economic benefits (e.g., lower prices, greater choice) from having access to such an alternative to the LECs' monopoly service. The goal of our expanded interconnection policy is to ensure that consumers realize the potential economic benefits of efficient competition in the interstate access market. We believe that this goal would not be met if we were to prescribe overhead loading factors that exceed each LEC's lowest overhead loading factor for DS1 and DS3 services.

315. Ameritech's lowest overhead loading factor for DS3 channel termination service in Indiana is .81. If we were to apply this overhead loading factor to Ameritech's direct costs, Ameritech would recover only 81 percent of its direct costs for physical collocation service in Indiana. We will not, therefore, apply the lowest overhead loading for comparable services for Ameritech DS3 physical collocation service in Indiana. We will, instead, adjust it upward to a factor of 1.0 in order to ensure that Ameritech of Indiana recovers its direct costs for physical collocation service.

⁵⁰⁵ The lowest overhead loading factor for LECs' comparable DS3 services are set forth in Appendix D.

⁵⁰⁶ See *Virtual Collocation Overhead Prescription Order*, 10 FCC Rcd at 6391-94.

ii. CBT and SWB

316. We are not prescribing an overhead loading factor in this Order for CBT and SWB because these LECs request confidential treatment of overhead loading and direct cost data they submitted for their comparable DS1 and DS3 services.⁵⁰⁷ While these data are essential for prescribing an overhead loading factor, these LECs argue that disclosure of these data could substantially harm their competitive positions.⁵⁰⁸ We find no compelling reason to prescribe an overhead loading factor for CBT and SWB before resolving the confidentiality issue because neither of these LECs currently offers physical collocation service under tariffs subject to this investigation. Prescribing an overhead loading before we resolve the confidentiality issue therefore would have no effect on the current level of physical collocation rates or on the potential competitive position of interconnectors in the interstate access markets. Instead, an overhead prescription for these two LECs affects only their potential refund liability for the past period over which they provided physical collocation service. At the same time, a conclusion based on the additional information that may be in the record after we resolve the confidentiality issue could differ from a conclusion made based on the record currently before us, thereby affecting the amount of any refund liability that may have accrued over the period that these LECs offered this service. Accordingly, we will prescribe overhead loading factors for CBT and SWB after we resolve their requests for confidential treatment of the overhead loading and direct cost data they submitted for their comparable DS1 and DS3 services.

E. Terms and Conditions

317. In order to ensure that interconnectors are able to compete with LECs in an efficient manner in the special and switched access markets, LECs must offer physical collocation arrangements under terms and conditions that are just, reasonable and nondiscriminatory. Terms and conditions are tariffed provisions that define the rights and obligations of the parties in the physical collocation arrangement. In this section, we review the LECs tariff language governing the terms and conditions of the physical collocation arrangement. While we approve certain terms and conditions designated for investigation that we find are not unreasonable, we order LECs to remove or modify any provisions that impose unreasonable requirements that place the interconnector at a competitive disadvantage. We believe that this action is necessary to remove potential barriers to entry, and create opportunities for efficient competition in the provision of special access and switched access. Moreover, we believe that our adoption of specific standards, for certain terms and conditions will clarify the rights and obligations of the parties, thereby reducing the number of disputes arising from the implementation of physical collocation.

⁵⁰⁷ See Letter from Alfred J. Titus, Jr., Regulatory Affairs, CBT to William F. Caton, Acting Secretary, FCC (dated May 20, 1994); Letter from Christine Jines, Corporate Manager, Federal Regulatory, SWB to James D. Schlichting, Chief, Competitive Pricing Division, FCC (dated May 1, 1997).

⁵⁰⁸ *Id.*

318. In this section of the Order, therefore, we examine the terms and conditions governing the size and use of central office floor space used for physical collocation. In particular, we consider what requirements LECs may reasonably impose on interconnectors regarding use of floor space, whether it is reasonable for LECs to set a minimum and maximum on space limitation for initial and subsequent orders, and whether LECs may include anti-warehousing provisions in their tariffs. In addition, we examine the circumstances under which LECs may conduct inspection of the collocation space and whether it is reasonable for them to charge for those inspections. We also examine the reasonableness of the types and levels of insurance coverage LECs require interconnectors to carry, as well as other tariff language that restricts the interconnectors' ability to self-insure, imposes requirements on the effective date and proof of insurance, and sets minimum ratings for insurance underwriters. Additionally, we review the LECs' liability provisions to determine whether it is reasonable for LECs to hold the interconnectors to higher standards of care than those to which the LECs hold themselves under their tariffs. We examine provisions governing termination and relocation in order to determine the circumstances under which it is reasonable for LECs to terminate service or require interconnectors to relocate. We also examine whether it is reasonable for LECs to prevent interconnectors from controlling their own channel assignment or using letters of agency. Finally, we review the parties' comments as to the reasonableness of the LECs' methodologies for computing interstate usage in the context of a physical collocation arrangement.

319. The remand of the *Special Access Expanded Interconnection Order* vacated the Commission's requirement that LECs offer the tariffed interstate physical collocation to interconnectors.⁵⁰⁹ The subsequent *Virtual Collocation Order* requires LECs to provide virtual collocation, but allows LECs, as an alternative, to provide physical collocation.⁵¹⁰ Only six LECs -- Lincoln, Nevada, NYNEX, Pacific, Rochester, and SNET -- still have in effect physical collocation tariffs that were designated for investigation in CC Docket No. 93-162. We address only the terms and conditions for physical collocation offered by these six LECs because retroactive application of modified terms and conditions can have no practical effect upon LECs that no longer provide tariffed interstate physical collocation.

1. Floor Space for Physical Collocation

320. In the *Special Access Expanded Interconnection Order*, the Commission noted that in certain central offices, space for physical collocation could become filled to capacity, and in these situations, LECs would be required to provide virtual collocation in lieu of rejecting subsequent requests for expanded interconnection.⁵¹¹ The Commission also

⁵⁰⁹ *Special Access Expanded Interconnection Order*, 7 FCC Rcd 7369.

⁵¹⁰ Expanded Interconnection with Local Telephone Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994) ("*Virtual Collocation Order*").

⁵¹¹ *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7407.

concluded that the LECs should be required to offer central office space for physical collocation on a first-come, first-served basis and permitted LECs to include in their tariffs reasonable restrictions on warehousing of unused space by interconnectors.⁵¹² In the *Designation Order*, the Bureau directed the LECs to provide detailed information regarding their provision of physical collocation arrangements.⁵¹³

a. Minimum and Maximum Space

i. Background

321. In the *Designation Order*, the Bureau directed the LECs to specify whether they established minimum or maximum space requirements for initial orders.⁵¹⁴ In addition, the Bureau asked whether LECs should be permitted to impose any minimum or maximum space limitation on any subsequent expansion of an interconnector's collocation space. The Bureau asked LECs that require minimum square footage for initial orders or for subsequent orders to explain why these minimum space requirements were chosen, why they believe these requirements are reasonable, and why alternative requirements are not reasonable.⁵¹⁵ LECs that established a maximum space limitation for collocation space for one collocater were directed to explain why this limit was chosen. The Bureau also directed NYNEX to explain and justify its tariff provision that considers an interconnector to have received 100 square feet, even if NYNEX delivers less, and that imposes a charge on an interconnector for 100 square feet rather than a pro rata amount based on the actual space provided.⁵¹⁶

322. All six of the LECs that currently offer interstate physical collocation service under tariffs subject to this investigation state that they offer floor space in increments of 100 square feet for initial orders.⁵¹⁷ NYNEX, Rochester, and SNET indicate, however, that they are willing to negotiate arrangements for less than 100 square feet.⁵¹⁸ NYNEX and Lincoln impose a maximum space limitation of 300 square feet;⁵¹⁹ For subsequent orders, Nevada,

⁵¹² *Id.* at 7407-408.

⁵¹³ *Designation Order*, 8 FCC Rcd at 6917.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.* at 6917-18.

⁵¹⁷ NYNEX Direct Case, Appendix C at 1-2; Lincoln Direct Case at 11; Nevada Direct Case at 13; Pacific Direct Case at 58; Rochester Direct Case at 6; SNET Direct Case at 12.

⁵¹⁸ NYNEX Direct Case, Appendix C at 1-2; Rochester Direct Case at 6-7; SNET Direct Case at 12-13.

⁵¹⁹ NYNEX Direct Case, Appendix C at 1; Lincoln Direct Case at 11;

Pacific, and SNET provide additional floor space in 100 square foot increments;⁵²⁰ NYNEX and Rochester provide additional space in 20 square foot increments.⁵²¹ Lincoln's tariff does not address orders for additional floor space, but Lincoln states that it "would prefer" to provide additional space in increments of 50 square feet.⁵²² SNET states it is willing to negotiate arrangements for more or less space on a case-by-case basis.⁵²³ Rochester, SNET, and Pacific impose a maximum space limitation of 400 square feet.⁵²⁴ Nevada does not impose a maximum limitation for floor space orders.⁵²⁵

ii. Discussion

(a) Minimum Floor Space

323. We conclude that it is not unreasonable for LECs to impose a 100 square foot limitation on initial and subsequent orders for floor space. All six LECs that currently provide physical collocation and are subject to this investigation require that, for initial orders, interconnectors lease a minimum of 100 square feet, and none of the interconnectors in this proceeding has opposed this requirement. We note that Teleport states in its opposition that a 100 square foot minimum is not unreasonable, and a marketing study conducted by Pacific reveals that no interconnector requested less than 100 square feet of floor space.⁵²⁶

324. Moreover, the record indicates that allocation of space in 100 square foot increments for initial and subsequent orders leads to efficient use of space. Although the minimum amount of space needed by an interconnector for expanded interconnection may vary depending on the amount and type of equipment deployed by an interconnector, we find that allocation of space in 100 square foot increments is not unreasonable because it permits LECs to (1) take into account safety and environmental concerns; (2) minimize the space needed to accommodate access aisles;⁵²⁷ and (3) standardize floor space dimensions in order to simplify design and planning of physical collocation space.

⁵²⁰ Nevada Direct Case at 13-14; Pacific Direct Case at 58; SNET Tariff F.C.C. No. 39, Section 18.4.

⁵²¹ NYNEX Direct Case, Appendix C at 1-2; Rochester Direct Case at 6-7.

⁵²² Lincoln Direct Case at 11.

⁵²³ SNET Direct Case at 12-13.

⁵²⁴ Rochester Tariff F.C.C. No. 1 Section 6.9.2(A); SNET Direct Case at 12; Pacific Direct Case at 61.

⁵²⁵ Nevada Direct Case at 14.

⁵²⁶ Teleport Opposition at B-1; Pacific Direct Case at 58.

⁵²⁷ See Nevada Direct Case at 13; Pacific Direct Case at 59-60 (citing National Equipment Building Systems Guidelines).

325. We note that Lincoln, NYNEX, Rochester, and SNET indicate that they are willing to provide less than 100 square feet of space upon request for initial orders.⁵²⁸ In addition, for subsequent orders, NYNEX, Rochester, and Lincoln will provide additional space in increments of less than 100 square feet.⁵²⁹ No commenters have presented contrary arguments, and we conclude that this practice is not unreasonable.

(b) Maximum Floor Space

326. For those LECs that elect to provide physical collocation in lieu of virtual collocation, we conclude that, if space is available in their central offices, it is unreasonable to impose maximum space limitations. We find that LECs providing physical collocation have failed to justify their limitations on the space available to interconnectors and that these limitations fail to account for interconnectors' potential future floor space needs. We believe that limiting the amount of floor space available to interconnectors may impede competition in the interstate access market by hampering the interconnectors' ability to expand their services, broaden their customer base, and provide efficient competition.

327. We recognize that without a provision establishing maximum floor space limitations exhaustion of the central office floor space available for physical collocation may occur, may interfere with a LEC's plans for expansion, or may prevent late-entry interconnectors from providing expanded interconnection through physical collocation. We do not believe, however, that this is sufficient justification for allowing LECs to impose a fixed limit on the amount of floor space an interconnector may obtain. When the floor space allocated to physical collocation in a central office is exhausted, these LECs must provide virtual collocation to all parties that request expanded interconnection.⁵³⁰ We believe that virtual collocation is a reasonable alternative for LECs that elect to provide physical collocation once the LEC has exhausted its space for physical collocation.

328. Furthermore, we believe that the anti-warehousing standards discussed in Section III.E.1.b below will substantially limit the problem of floor space exhaustion by permitting LECs to reclaim space or limit orders for additional space when interconnectors are not using their space efficiently. We believe that these anti-warehousing provisions, coupled with our restriction on setting maximum floor space limitations, will allow the LECs to ensure reasonable utilization of their central office space while allowing interconnectors to develop their service and expand their customer base. Accordingly, all LECs that currently provide

⁵²⁸ Lincoln Direct Case at 11; NYNEX, Direct Case, Appendix C at 1; Rochester Direct Case at 6-7; SNET Direct Case at 12-13.

⁵²⁹ NYNEX Direct Case, Appendix C at 1; Rochester Direct Case at 6-7; Lincoln Direct Case at 11. NYNEX explains that if an interconnector is provided with less than 100 square feet of space, it will only be charged for the actual amount of space delivered. NYNEX Direct Case, Appendix C at 1.

⁵³⁰ *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7403.

interstate physical collocation under tariffs subject to this investigation and have tariff provisions that restrict the total amount of floor space that can be ordered for collocation arrangements are directed to file revisions to their tariffs removing such restrictions.

329. Although we prohibit LECs from limiting the total amount of floor space an interconnector can order, we permit LECs to limit initial orders for floor space to 100 square feet, provided that interconnectors are permitted to obtain additional floor space when their existing floor space is being used efficiently. The LECs, as well as all interconnectors, have a valid interest in assuring that the floor space is used efficiently to prevent premature exhaustion of central office space available for expanded interconnection.

b. Warehousing and efficient use of floor space

i. Background

330. In the *Special Access Expanded Interconnection Order*, the Commission stated that LECs will be permitted to include in their tariffs reasonable restrictions on warehousing of unused space by interconnectors.⁵³¹ The Commission also stated that once a LEC provides physical collocation in a particular central office, it may not withdraw this offering for existing customers because of space limitations, absent extraordinary circumstances.⁵³² Through their tariffs, Lincoln, NYNEX, Nevada, and Pacific reserve the right to either reclaim space or refuse to provide additional space if the interconnector is not using existing space in an efficient manner.⁵³³ In the *Designation Order*, the Bureau directed LECs to justify any controls they were imposing on interconnectors' use of floor space, to explain the violations of tariff terms and conditions that warrant eviction for inefficient use of space, and to justify policies of reserving the right to refuse to rent additional space to an existing interconnector on the ground that the interconnector has not efficiently used its space, particularly in central offices in which there is existing space available for physical collocation.⁵³⁴

ii. Discussion

331. We conclude, in Section III.E.1.a above that it is unreasonable for LECs electing to provide physical collocation to cap the physical collocation space they will make available to an interconnector because such a restriction may interfere with that

⁵³¹ *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7408.

⁵³² *Id.* at 7407-408.

⁵³³ Lincoln Direct Case at 15; NYNEX Direct Case, Appendix F at 1; Nevada Direct Case at 16-17; Pacific Direct Case at 65-67. Rochester and SNET do not have any restrictions on how the interconnectors' floor space must be used. Rochester Direct Case at 8; SNET Direct Case at 14.

⁵³⁴ *Designation Order*, 8 FCC Rcd at 6920.

interconnector's ability to offer additional services and expand its customer base. We recognize, however, that with the first come, first served rule, allowing initial interconnectors to warehouse unused or inefficiently used space may prevent subsequent interconnectors from establishing a physical collocation arrangement or preclude existing interconnectors from expanding their physical collocation space when they have legitimate needs for such expansion. Moreover, once central office space is exhausted, space that is either unused or inefficiently used may undermine the LEC's ability to expand its own operation in order to meet growing demands of its customers. Accordingly, if space is needed by subsequent interconnectors or the LECs, we find that it is not unreasonable for LECs to reclaim space that is either not being used or not being used efficiently.

332. We find that it is not unreasonable for LECs to require that "substantially all" of the floor space be occupied by transmission equipment needed to provide service. This requirement is not unreasonably restrictive because it still gives interconnectors the flexibility they need to design their floor space usage to meet their unique needs. In determining whether an interconnector's space is being used efficiently, we expect that LECs will consider all relevant factors, including the need to meet minimum safety standards, the amount of space needed for ventilation and access, the need for an adequate amount of storage space and the number of bays needed for the type of equipment deployed. Moreover, we order LECs subject to this investigation that are currently offering physical collocation service to state in their tariffs that they will provide interconnectors with at least 180 days to satisfy the requirement that floor space be efficiently used. We require LECs to make this tariff modification to ensure that interconnectors have ample time to plan the use of their space, order their equipment, and have the equipment installed.

333. Accordingly, we conclude that anti-warehousing provisions in LEC tariffs that allow LECs to reclaim existing space or restrict allocation of additional space if the interconnectors are not using their existing space in an efficient manner are not unreasonable. Such provisions, however, must not restrict the amount or type of equipment occupying the space as long as "substantially all" the space is being occupied by transmission equipment.⁵³⁵ We therefore require Pacific to remove language in its tariff that provides for reclamation of floor space unless the space is occupied by at least six bays of equipment in a 100 square foot area.

c. Ordering Charges

i. Background

334. Lincoln, NYNEX, Nevada, Pacific, and SNET impose, for additions to physical collocation space, the same nonrecurring charges they charge for new orders, and in essence

⁵³⁵ We note that, under our *Expanded Interconnection* rulemaking orders, LECs are not required to provide collocation of enhanced services, customer premises, or other non-transmission equipment. See *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7412.

require a repetition of the entire ordering process for new orders.⁵³⁶ In the *Designation Order*, the Bureau directed these LECs to explain why such orders cannot be processed as an addendum to the original agreement with a simplified procedure and correspondingly lower nonrecurring charge.⁵³⁷

ii. Discussion

335. We find that it is not unreasonable for LECs to impose, for orders for additional space, the same non-recurring charges they impose for initial orders, because the record indicates that the non-recurring costs associated with initial orders for physical collocation also are incurred in subsequent orders for additional space. For example, it appears that, in processing new orders, LECs must ascertain the adequacy of existing support structures, review existing designs or redesign available space, modify cable racking, and install additional cable.⁵³⁸ On the other hand, interconnectors have submitted no evidence from which we could conclude that the costs of processing orders for additional space are less than for initial orders.

d. Contiguous space for expansion

i. Background

336. In the *Designation Order*, the Bureau directed the LECs to state their policies for providing contiguous space when interconnectors expand their operations and direct cabling between noncontiguous spaces and to explain why these policies are reasonable. All six LECs currently providing physical collocation state that they provide contiguous space for expansion when it is available.⁵³⁹ If contiguous space is not available, certain LECs state that they will allow interconnectors to connect noncontiguous space with direct cabling.⁵⁴⁰

ii. Discussion

337. For reasons of convenience and efficiency, when interconnectors expand their operations, they prefer to use contiguous space. We therefore require all LECs providing physical collocation to state in their tariffs that they will make reasonable efforts to provide

⁵³⁶ Lincoln Direct Case at 11; NYNEX Direct Case, Appendix C at 2; Nevada Direct Case at 14; Pacific Direct Case at 62; SNET Direct Case at 13.

⁵³⁷ *Designation Order*, 8 FCC Rcd at 6917-18.

⁵³⁸ See, e.g., Pacific Direct Case at 62.

⁵³⁹ Lincoln Direct Case at 11-12; Nevada Direct Case at 14-15; NYNEX Direct Case, Exhibit C at 3; Pacific Direct Case at 63; Rochester Direct Case at 7; SNET Direct Case at 14.

⁵⁴⁰ See, e.g., Nevada Direct Case at 15; Pacific Direct Case at 63; SNET Direct Case at 14.

contiguous space when interconnectors require it for expansion. Because we are only requiring LECs to provide contiguous space when it is reasonably available and all six LECs currently providing interstate physical collocation under tariffs subject to this investigation state that they follow this practice, we find that this requirement is not unreasonably burdensome.

338. Where contiguous space is not reasonably available, we find that direct cabling between non-contiguous spaces enables interconnectors to use non-contiguous spaces as if they were contiguous. We therefore conclude that direct cabling between non-contiguous spaces, offered at tariffed rates, is a reasonable alternative where contiguous space is not available. All six LECs currently offering interstate physical collocation under tariffs subject to this investigation state that they already follow this practice, and we require that they continue to do so.

2. Inspection Provisions

a. Background

339. In the *Designation Order*, the Bureau asked the LECs to identify the provisions in their physical collocation tariffs governing inspection of interconnector space and facilities, to state whether the interconnector must pay for such inspections, and to explain why they believe their requirements are reasonable.⁵⁴¹ Lincoln, Nevada, Pacific, NYNEX, and SNET provide for inspection following initial installation of equipment and subsequent inspections at periodic intervals.⁵⁴² Rochester's tariff does not contain provisions addressing inspections.⁵⁴³ Most of the LECs state that they provide interconnectors with notice and do not charge the interconnectors for the inspection.⁵⁴⁴ NYNEX states that it charges interconnectors if the inspection reveals that the interconnector is not complying with terms and conditions of the tariff.⁵⁴⁵

b. Discussion

340. Regular inspections can ensure that the interconnectors' equipment and space are being used according to the terms and conditions of the tariff and that the interconnectors'

⁵⁴¹ *Designation Order*, 8 FCC Rcd at 6926-27.

⁵⁴² Lincoln Direct Case at 28; Nevada Direct Case at 28-29; Pacific Direct Case at 85-86; NYNEX, Appendix O at 1; SNET Direct Case at 22.

⁵⁴³ Rochester Direct Case at 14.

⁵⁴⁴ Lincoln Direct Case at 28; SNET Direct Case at 22; Nevada Direct Case at 28-29; Pacific Direct Case at 85-86.

⁵⁴⁵ NYNEX Direct Case, Appendix O at 1, n.2.

equipment and space utilization meet safety standards and do not pose a hazard to the LECs' network or the LECs' employees. For these reasons, we conclude that it is not unreasonable for LECs offering interstate physical collocation to conduct inspections following the initial installation of equipment, installation of additional equipment, and reconfiguration of equipment and space utilization and to conduct regular inspections of interconnectors' space, provided that such inspections occur no more frequently than once a month. We also find that it is not unreasonable for LECs to conduct emergency inspections of collocators' equipment and space because in an emergency, LECs need to inspect the entire central office in order to determine the cause and the extent of the problem.

341. The record indicates that, with the exception of NYNEX, none of the six LECs that currently provide physical collocation under tariffs subject to this investigation charges interconnectors for inspections. NYNEX states that it charges interconnectors for an inspection only if the inspection reveals that the interconnector was in violation of the tariff. We find that this practice is not unreasonable.

342. To minimize the burden on interconnectors, we conclude that interconnectors have a right to be present for inspections of their physical collocation equipment and to have two weeks' advance written notice for non-emergency inspections. If an inspection is conducted by an outside agency (e.g., fire, safety, insurance), the LEC is required to notify the interconnector promptly in writing of the outside agency inspection unless notice in writing is not practicable. If notice in writing is not practicable, the LEC must provide the interconnector with prompt non-written notice so that the interconnector can exercise its right to be present at the inspection. In the event that an emergency necessitates an inspection, we require the LECs, as soon as reasonably possible, to notify the interconnector of the emergency, the nature of the emergency, and that an inspection is being conducted in response to the emergency.

3. Insurance Requirements

a. Levels and Types of Insurance

i. Background

343. In the *Special Access Expanded Interconnection Order*, the Commission stated that concerns regarding the insurance levels required for physical collocation arrangements and similar matters are best resolved through informal discussions among interested parties, with the resolutions of those discussions reflected in the LECs' tariffs.⁵⁴⁶ The Commission also required that the arrangements in the tariffs must meet legitimate concerns, but not be unreasonably restrictive or expensive.⁵⁴⁷ In the *Designation Order*, the Bureau directed the

⁵⁴⁶ *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7407 n.189.

⁵⁴⁷ *Id.*

LECs to justify the levels and types of insurance coverage they require for interconnectors to carry.⁵⁴⁸ The Bureau directed LECs that impose insurance requirements for automobiles to justify those requirements when their tariffs specifically prohibit parking by interconnector-personnel.⁵⁴⁹ Likewise, LECs were directed to justify differences between the insurance levels and types of coverage LECs require of interconnectors and the levels and types of coverage that they hold themselves.⁵⁵⁰

344. All six LECs currently offering physical collocation require the interconnectors to carry general liability insurance ranging from \$1 million to \$5 million.⁵⁵¹ In addition, Rochester, Lincoln, NYNEX, and SNET require interconnectors to carry excess liability coverage in amounts ranging from \$5 million to \$10 million.⁵⁵² All six LECs also require interconnectors to maintain statutory levels of coverage for workers compensation and require employer's liability insurance in the following amounts: Pacific and Nevada, \$1 million; Lincoln, NYNEX, Rochester, and SNET, \$2 million.⁵⁵³ Finally, Lincoln requires interconnectors to maintain \$1 million in automobile liability insurance for automobiles used on its premises; Rochester requires \$3 million; Pacific and Nevada, \$5 million; and SNET requires the amount specified in relevant state statutes.⁵⁵⁴ NYNEX's tariff does not require automobile liability coverage.⁵⁵⁵

ii. Discussion

345. Types of Insurance. As a preliminary matter, we find that none of the commenters opposes the LECs' workers compensation and employer liability insurance

⁵⁴⁸ *Designation Order*, 8 FCC Rcd at 6924.

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ Lincoln Direct Case at 24; Nevada Direct Case at 23; NYNEX Direct Case, Appendix K at 1; Pacific Direct Case at 79-81; Rochester Direct Case at 12 (citing Rochester Tariff F.C.C. No. 1, Section 6.9.2(C)); SNET Direct Case at 19-20.

⁵⁵² Rochester Tariff F.C.C. No. 1, Section 6.9.2(C); Lincoln Direct Case at 24; NYNEX Direct Case, Appendix K at 1; SNET Direct Case at 19-20.

⁵⁵³ Lincoln Direct Case at 24; Nevada F.C.C. Tariff No. 1, Section 18.5; NYNEX Direct Case, Appendix K at 1; Pacific Direct Case at 79-81; Rochester Direct Case at 12 (citing Rochester Tariff F.C.C. No. 1, Section 6.9.2(C)); SNET Direct Case at 19-20.

⁵⁵⁴ Lincoln Direct Case at 24; Nevada F.C.C. Tariff No. 1, Section 18.5; NYNEX Direct Case, Appendix K at 1; Pacific Direct Case at 79-81; Rochester Direct Case at 12 (citing Rochester Tariff F.C.C. No. 1, Section 6.9.2(C)); SNET Direct Case at 19-20.

⁵⁵⁵ NYNEX Direct Case, Appendix K at 1.

requirements, and we conclude that such requirements are reasonable. Moreover, due to the unique circumstances posed by physical collocation, we find that it is not unreasonable for LECs to require interconnectors to maintain a reasonable amount of general liability and excess liability insurance coverage to protect against occurrences that may potentially arise out of the physical collocation arrangement. We disagree with Teleport's argument that the physical collocation arrangement is the equivalent of adding a few racks of multiplexing equipment and therefore poses no additional risk to a central office. We find that the presence of interconnectors in the LECs' central office adds additional risk to the LECs' property and operations because the LECs do not have control over the interconnectors' equipment or the personnel that operate the equipment. In the absence of such control, we find that it is not unreasonable for LECs to require general liability insurance to protect against property damage to the LECs' equipment, personal injury to the LECs' employees, and losses to the LECs' customers because of service interruptions caused by interconnectors. For these reasons, we conclude that the LECs are justified in requiring the interconnectors to carry a reasonable amount of liability insurance coverage. We also believe that it is not unreasonable for LECs to require interconnectors to carry a reasonable amount of automobile insurance, provided that interconnector-employees are permitted to park their vehicles on LEC property.

346. Levels of Insurance Coverage. We note that because each LEC central office is unique, the LECs are in the best position to determine the amount of insurance coverage that would be necessary to protect their investment. The insurance coverage needed by each central office will vary according to the size of the central office, its location, the number of personnel, the value of the LEC's property and equipment housed there, and the revenue stream attributable to that office. It is difficult, therefore, for us to prescribe the specific level of insurance that would be required to insure against risk for each LEC without first conducting a financial analysis of each LEC on a case-by-case basis. We decline to take this approach, and choose instead to examine the reasonableness of the required insurance levels and to establish a maximum acceptable insurance level based on an industry average plus one standard deviation. Under this standard, we will find a LECs' requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average.

347. Based on our analysis, we find that the insurance levels of all LECs that currently provide physical collocation do not exceed one standard deviation above the industry average, and are therefore not unreasonable. We calculate the industry average plus one deviation by including the amount of coverage required for general liability, excess liability, employer's liability and automobile liability in the aggregate. We base our analysis on insurance levels in the aggregate rather than on the individual categories of insurance because the coverage needs of each LEC may vary, and this approach assures the LECs greater flexibility in determining how much insurance they will require under each category of insurance. Although we ordinarily would examine only the insurance levels proposed by the six LECs subject to this investigation that are currently offering physical collocation, we determine the reasonableness of these LECs' insurance levels by conducting this comparison

with a larger sample of LECs in order to develop a more reliable range of insurance levels. We therefore compare the insurance levels proposed by all fourteen LECs that actually provided physical collocation to at least one customer.⁵⁵⁶ Although eight of the fourteen LECs in this sample no longer provide physical collocation, we find that because all fourteen LECs provided physical collocation at one time, their insurance requirements provide for a reasonable comparison that should be included in the sample.

348. The LECs' overall average for insurance requirements in the aggregate is \$12.88 million and the standard deviation relative to that average is \$8.28 million. The average plus one standard deviation is, therefore, \$21.15 million. The total insurance requirements of the six LECs subject to this investigation that currently offer physical collocation are as follows: \$15 million for Lincoln, \$15 million for Nevada, \$6 million for Pacific, \$13 million for Rochester, \$14 million for SNET, and \$9 million for NYNEX. The insurance levels of all six LECs subject to this investigation that currently offer physical collocation service are, therefore, below the average plus one standard deviation. Accordingly, we find that their required levels of insurance are not unreasonable.

b. Self-insurance

i. Background

349. In the *Designation Order*, the Bureau required LECs that do not permit interconnectors to self-insure under any circumstances to explain their reason for that policy.⁵⁵⁷ NYNEX and Pacific object to self-insurance, although Pacific states that it would allow companies that have obtained state approval with respect to workers compensation to self-insure.⁵⁵⁸ Nevada states that it permits self-insurance with regard to workers compensation claims only, and only when its interconnector-customers have obtained proper authorization.⁵⁵⁹ Rochester states that it does not oppose self-insurance in "appropriate circumstances."⁵⁶⁰ Lincoln states that it permits self-insurance, if the program is satisfactory to Lincoln.⁵⁶¹ SNET does not address this issue.

⁵⁵⁶ For purposes of this analysis we compare insurance levels of Ameritech, Bell Atlantic, Bell South, CBT, GTOC, Lincoln, Nevada, NYNEX, Pacific, SNET, Southwestern Bell, Rochester, Central, and US West.

⁵⁵⁷ *Designation Order*, 8 FCC Rcd at 6924.

⁵⁵⁸ NYNEX Direct Case, Appendix K at 2; Pacific Direct Case at 81-82.

⁵⁵⁹ Nevada Direct Case at 24.

⁵⁶⁰ Rochester Direct Case at 12.

⁵⁶¹ Lincoln Direct Case at 24.

ii. Discussion

350. A requirement that LECs permit interconnectors to self-insure would force the LEC into the position of having to examine the interconnector's financial records and make a judgment regarding the interconnector's financial condition. To mandate such a process would place unnecessary burdens on both LECs and interconnectors. We note that Teleport asserts that there may be "less intrusive" methods to determine an interconnector's financial stability. Teleport, however, fails to offer alternatives for consideration, and we find none in the record. Although we encourage LECs currently offering physical collocation to provide the flexibility to interconnectors to self-insure where it is mutually beneficial, we do not find the LECs' tariff restrictions on self-insurance to be unreasonable.

c. Underwriters

i. Background

351. In the *Designation Order*, the Bureau directed LECs that require interconnectors to use underwriters with particular rating levels to justify these requirements. Most LECs require the interconnectors' general liability carrier to have particular minimum rating levels in order to ensure adequate coverage by reputable insurance carriers. SNET and NYNEX require at least a AA-12 rating.⁵⁶² Nevada and Pacific state that they require at least a Best insurance A rating and Pacific notes that its own insurance companies must have A+ ratings.⁵⁶³ Lincoln states only that it requires an insurer to be licensed in the state in which expanded interconnection is offered and that the company be satisfactory to Lincoln.⁵⁶⁴ Rochester's tariff does not specify a rating requirement, but Rochester notes that it requires interconnectors to carry insurance with the same rating Rochester requires of its own insurers.⁵⁶⁵

ii. Discussion

352. We find that it is not unreasonable for LECs providing physical collocation to require that interconnectors' insurers meet minimum rating requirements. The LECs' customers, end users, and shareholders have an interest in ensuring that the interconnector's insurance company will be able to cover a claim in the event of loss to the LEC, and insurance ratings are considered to be indicators of an insurance company's reputation for

⁵⁶² Nevada Direct Case at 25-26; NYNEX Direct Case, Appendix K at 2; SNET Tariff F.C.C. 39, Section 18.4.

⁵⁶³ Nevada Direct Case at 25-26; Pacific Direct Case at 82; Rochester Direct Case at 12; Pacific Direct Case at 82.

⁵⁶⁴ Lincoln Direct Case at 24.

⁵⁶⁵ Rochester Direct Case at 12.

solvency and ability to pay claims. We find, however, that the required rating should be no higher than what the LEC requires of its own underwriters because interconnectors pose no greater risk to the LEC's facilities than the LEC does itself, and requiring interconnectors to use insurance carriers with higher ratings would unreasonably increase the interconnectors' cost of business and would be an anticompetitive barrier to entry. Those LECs that provide interstate physical collocation under tariffs subject to this investigation that have provisions inconsistent with this mandate must amend their tariffs accordingly. We also find that Lincoln's requirement that the interconnector's insurance company be "satisfactory" to Lincoln is unreasonably vague, and we require Lincoln to delete this provision from its tariff.

d. Effective Date of Insurance

i. Background

353. In the *Designation Order*, the Bureau directed LECs requiring proof that an interconnector's insurance is effective at a certain time to explain why their policy is reasonable.⁵⁶⁶ The Bureau also required opposing parties to comment on the type of proof required.⁵⁶⁷ All six LECs that currently offer physical collocation require that interconnectors' insurance be effective on or before the date the interconnector occupies the LEC's premises.⁵⁶⁸ In addition, Lincoln, NYNEX, and SNET require proof of the interconnectors' insurance prior to the date construction of an interconnector's cage commences.⁵⁶⁹ Nevada requires its interconnection customers "to furnish upon request" copies of its insurance policies.⁵⁷⁰

ii. Discussion

354. The record indicates that, in a typical physical collocation arrangement, the LEC is responsible for configuration of the floor space and cage construction. It is not until after construction is complete that the interconnector is permitted to take possession of the cage for installation, provisioning,⁵⁷¹ and operation of its own equipment. Because the

⁵⁶⁶ *Designation Order*, 8 FCC Rcd at 6924.

⁵⁶⁷ *Id.*

⁵⁶⁸ SNET Direct Case at 20; Lincoln Direct Case at 24, NYNEX Direct Case, Appendix K at 3, Nevada Direct Case at 26; Pacific Direct Case at 82; Rochester Tariff F.C.C. No. 1, Section 7.8.2(C).

⁵⁶⁹ Lincoln Tariff F.C.C. No. 3 at 8.2.4(B); NYNEX Tariff F.C.C. No. 1, Section 28.7.2; SNET Direct Case at 20.

⁵⁷⁰ Nevada Direct Case at 26.

⁵⁷¹ Provisioning includes the following: service order processing; pre-construction survey, design, and engineering; space preparation construction management and coordination; circuit design and cross-connection testing. See para. 63 *supra*.

interconnector is not involved in the construction of its cage, the interconnector does not pose any risk to the LEC's property or the public network before construction is complete and the interconnector takes possession of the cage. Accordingly, we prohibit Lincoln, NYNEX, and SNET from requiring interconnectors to have insurance in effect prior to completion of construction, unless during the construction period the interconnector has access to the LEC's premises either directly or through its contractors.

355. We believe, however, that it is reasonable for LECs to require proof of insurability prior to the commencement of construction on the interconnectors' space. We believe that such a requirement is not unduly burdensome for the interconnector and affords the LEC assurance, before construction of the interconnector's space begins, that the interconnector is insurable. Finally, we agree with Teleport that requiring a copy of the insurance policy as proof of insurance coverage is unnecessary and may result in disclosure of confidential information. We believe that an insurance certificate, stating the amount of insurance and the effective date of coverage, is sufficient proof that the interconnector has purchased the proper insurance coverage. Accordingly, we require Nevada, and any other LEC currently offering physical collocation that has tariff provisions directing the interconnectors to provide a copy of their policy as proof of their insurance coverage to revise their tariffs to delete such provisions.

4. LECs' Liability Provisions

a. Background

356. In the *Designation Order*, the Bureau directed the LECs to explain the policies articulated in their tariffs concerning an interconnector's right of action against a LEC for negligence, gross negligence, willful misconduct, or intentional harm, and to explain why it is reasonable to include language limiting the LECs' own liability, while holding the interconnectors to a higher standard than the LECs themselves would be held to under their tariffs.⁵⁷² Pacific, Rochester, Nevada, and SNET state that the same liability provisions that apply to their other customers of interstate access service also apply to their expanded interconnection customers.⁵⁷³ Lincoln, Nevada, Pacific, NYNEX, and SNET's tariffs contain provisions that hold the LECs liable to interconnectors only for willful misconduct, while holding their interconnector-customers to an ordinary standard of negligence.⁵⁷⁴ In addition, Pacific, Lincoln, NYNEX, and Rochester have tariff provisions requiring interconnectors to indemnify them against all claims and liabilities arising out of the operation of their facilities

⁵⁷² *Designation Order*, 8 FCC Rcd at 6925.

⁵⁷³ Rochester Direct Case at 13; SNET Direct Case at 21; Nevada Direct Case at 26; Pacific Direct Case at 83.

⁵⁷⁴ Lincoln Direct Case at 25 (citing Tariff F.C.C. No.3, Section 8.2.5); Nevada Direct Case at 26 (citing Tariff F.C.C. No. 1, Section 18.5(B)(h)); Pacific Tariff Direct Case at 83-84; NYNEX Direct Case, Appendix L at 1; SNET Direct Case at 21.

in the central office.⁵⁷⁵ Pacific also includes provisions in its tariff holding interconnectors liable for losses from interconnector activities for at least three years from the termination, cancellation, modification, or rescission of the physical collocation arrangement.⁵⁷⁶

b. Discussion

357. Prior to tariffing physical collocation, the LECs' general access tariffs provided that their liability for outages would be limited to credit allowances based on the applicable charges for the period the service was affected. Certain LECs now seek to limit their own liability in the expanded interconnection arrangement with similar provisions, while holding interconnectors liable for additional damages. Additionally, certain LECs' tariffs hold interconnectors to a stricter standard of care than the LECs would hold themselves in their relationship with interconnectors. For example, Pacific holds the interconnectors liable for any damage or outage to Pacific's network due to the interconnectors' willful or negligent conduct.⁵⁷⁷ Pacific's tariff states, however, that it cannot be held liable for any interruption of service or for interference with the operation of the collocators' facilities unless caused by Pacific's willful misconduct.⁵⁷⁸

358. We are not persuaded by the LECs' arguments that the interconnector should assume broader liability because the relationship between LECs and interconnectors is analogous to a landlord/tenant relationship. We find that limitations on the LECs' liability for service interruptions, as well as for other types of damages, are unreasonable unless they are applied symmetrically to both LECs and interconnectors. We believe that disparity in liability provisions that permit a LEC to limit an interconnector's right of action against the LEC, without similar limitations on the LEC's right to sue the interconnectors, is unreasonably discriminatory.

359. Unlike other special access customers, the expanded interconnector-customer operates as both a customer and a competitor of the LEC. Because both the interconnector and the LEC may compete to serve the same access customers, both have similar concerns regarding service interruptions and service quality. Moreover, unlike other LEC access customers, the interconnector's transmission equipment and personnel are physically present in the LECs' facilities, giving rise to added potential risks that the LECs' negligent conduct may result in harm to the interconnectors' equipment or personnel. Conversely, the presence of the interconnector's equipment and employees in the LEC's central office creates the

⁵⁷⁵ Pacific Tariff F.C.C. No. 128, Section 2.1.3; NYNEX Direct Case, Appendix L at 1; Lincoln Tariff F.C.C. No. 3, Section 8.2.5(B); Rochester Tariff F.C.C. No. 1, Section 2.1.3.

⁵⁷⁶ Pacific Rebuttal at 69.

⁵⁷⁷ Pacific Tariff F.C.C. No. 128, Section 16.2.4.

⁵⁷⁸ *Id.* at Section 2.1.3(J).

possibility that the interconnector's negligent conduct may cause physical damage to the LEC's equipment or injury to LEC personnel. Because the interconnector's physical presence in the LEC's central office poses a risk of harm for both LECs and interconnectors, the limitations on LEC liability that apply to other customers of interstate access service are unreasonable in a physical collocation arrangement. We have reviewed the record and find no justification for tariff provisions that allow the LEC to deprive the interconnector of a right of action against the LEC for service interruptions and other types of damages caused by the LECs or that hold the interconnector to a stricter standard of care while waiving such liability for the LEC. We therefore conclude that all LECs providing physical collocation must impose on themselves the same standard of liability they impose on their interconnectors.

360. Although we note the LECs' concerns that they are subject to greater financial risk than the interconnectors, we do not agree that this concern justifies imposing stricter liability standards on interconnectors. The interconnector's potential loss may be smaller in terms of absolute dollar amounts, but its financial loss relative to its entire business may be as significant or even more significant because it often relies on a few large customers for a substantial share of its total revenue. Accordingly, we require all six LECs currently offering physical collocation to delete any language from their tariffs that imposes a different standard of care on the interconnectors than the LECs impose on themselves.

361. Additionally, we agree with the commenters that it is unreasonable for Pacific to include tariff provisions holding interconnectors liable for losses from interconnector activities for at least three years from the termination, cancellation, modification, or rescission of the physical collocation arrangement. The record has not provided, nor can we envision, circumstances in which a LEC would not discover property damage or personal injury caused by an interconnector for three years from termination of the physical collocation arrangement.⁵⁷⁹ Accordingly, we order Pacific to file a tariff revision removing such language from its tariff.

5. Termination of Service

a. Background

362. In the *Designation Order*, the Bureau directed the LECs to justify their tariff provisions permitting termination of service for any violation of the tariff.⁵⁸⁰ In addition, the Bureau directed the parties to discuss the circumstances under which termination of service is reasonable and the circumstances under which termination of a collocation agreement should

⁵⁷⁹ We note that the statutes of limitations or statutes of repose in the state in which a cause of action arises presumably would govern the period of time within which an action against an interconnector could be filed.

⁵⁸⁰ *Designation Order*, 8 FCC Rcd at 6920-21.

be prohibited.⁵⁸¹ Finally, the Bureau directed interested parties to describe the conditions, if any, under which interconnectors should be charged for termination of the collocation arrangement and what type of notice period should be required by the parties.⁵⁸²

363. SNET, Pacific, NYNEX, and Nevada state that all terms in their tariffs are "material" terms and that violations of any of these terms warrant termination of an expanded interconnection arrangement.⁵⁸³ Nevada specifically states that it may terminate an interconnection arrangement if the customer fails to comply with the insurance coverage requirements or fails to meet its responsibilities under the tariff to ensure that the customer's equipment pose no unreasonable risk to Nevada's service.⁵⁸⁴ Pacific reserves the right to terminate a collocation agreement if the central office is closed, sold, or subject to eminent domain, or the interconnector fails to pay a tariffed fee or charge, breaches security, fails to interconnect within 180 days of occupancy, or offers service in conflict with any rule, order, regulation, or judicial or administrative decision.⁵⁸⁵ NYNEX's tariff permits termination of service if the interconnector files for bankruptcy or violates state or federal law.⁵⁸⁶ SNET and Rochester reserve the right to terminate service for nonpayment or for "unlawful" or "abusive" use of the service.⁵⁸⁷ Lincoln states that it will terminate service for default or breach of material terms or conditions of expanded interconnection and Lincoln's tariff states that either party has the right to terminate in the event of the other party's bankruptcy, liquidation, insolvency, or receivership.⁵⁸⁸ None of the six LECs that currently offer interstate physical collocation under tariffs subject to this investigation imposes charges for termination of service beyond any charges accrued prior to the date of termination.

364. NYNEX, SNET, Pacific, Nevada, and Lincoln provide notice to interconnectors prior to termination.⁵⁸⁹ The notice period for termination ranges from fifteen days to six

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ SNET Direct Case at 16; Pacific Direct Case at 74; NYNEX Direct Case, Appendix H at 2; Nevada Direct Case at 19.

⁵⁸⁴ Nevada Direct Case at 19.

⁵⁸⁵ Pacific Direct case at 74.

⁵⁸⁶ NYNEX Direct Case at 17.

⁵⁸⁷ SNET Direct Case at 16; Rochester Direct Case at 19.

⁵⁸⁸ Lincoln Tariff F.C.C. No. 3, Section 8.2.2.

⁵⁸⁹ NYNEX Direct Case, Appendix 6 at 2; SNET Direct Case at 15; Pacific Direct Case at 68; Nevada Direct Case at 18; Lincoln Direct Case at 16.

months, depending on the reason for termination.⁵⁹⁰ NYNEX permits the interconnector to terminate the collocation arrangement on 60 days' notice for cause or no cause.⁵⁹¹ Pacific requires 30 days notice from its customers seeking to terminate a collocation arrangement.⁵⁹² Except for cases of breach, for which it requires 60 days' notice, Lincoln does not require any advance notice of termination by the interconnectors.⁵⁹³ SNET requires interconnectors to provide six months notice of their intentions to terminate.⁵⁹⁴ Rochester states that its tariff does not contain termination notification provisions specifically applicable to expanded interconnection and that interconnectors may terminate an interconnection arrangement under "standard connection and disconnection intervals."⁵⁹⁵

b. Discussion

365. We conclude that an interconnector's failure to comply with certain tariff provisions could have potentially serious consequences for the LEC, and that tariff provisions permitting termination may offer the LEC a reasonable mechanism for assuring compliance with tariff provisions that are essential for protecting the integrity of the LEC's network and financial investment. Nevertheless, because the current record does not permit us to determine all the possible circumstances that would warrant termination of service, we believe that individual determinations of whether a LEC termination of an interconnector's service was warranted will have to be addressed in a formal complaint proceeding in which the specific facts may be fully examined. We emphasize, however, that LECs may not terminate physical collocation service for minor infractions of the tariff provisions.

366. We find that if a LEC determines that termination is warranted, the interconnector should receive reasonable notice and an opportunity to cure any tariff violation. Accordingly, we order all LECs that currently provide interstate physical collocation under tariffs subject to this investigation to include language in their tariffs stating that they will not terminate an interconnector's service for violating a tariff provision unless the interconnector has been given notice and an opportunity to cure the violation.

367. We also find that it is unreasonable for LECs to terminate interconnection for reasons related to issues raised in a pending Section 208 complaint. We decline, however,

⁵⁹⁰ NYNEX Direct Case, Appendix 6 at 2; SNET Direct Case at 15; Pacific Direct Case at 68; Nevada Direct Case at 18; Lincoln Direct Case at 16.

⁵⁹¹ NYNEX Direct Case, Appendix G at 2.

⁵⁹² Pacific Direct Case at 70.

⁵⁹³ Lincoln Direct Case at 16.

⁵⁹⁴ SNET Direct Case at 15.

⁵⁹⁵ Rochester Direct Case at 9.